

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

OPEN SESSION

Tuesday, August 1, 2000

4:05 p.m.

Legal Services Corporation
750 First Street
Washington, D.C.

BOARD MEMBERS PRESENT:

Douglas S. Eakeley, Chairman
Hulett H. Askew
LaVeeda M. Battle
John T. Broderick, Jr.
John N. Erlenborn
Edna Fairbanks-Williams
F. William McCalpin
Nancy H. Rogers
Thomas F. Smegal, Jr.
Ernestine P. Watlington

STAFF PRESENT:

John McKay, President
Victor M. Fortuno, Vice President for Legal Affairs,
General Counsel and Corporate Secretary
Laurie Tarantowicz, Counsel to the Inspector General

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MOTIONS: 3, 4, 5, 12, 20

1 P R O C E E D I N G S

2 CHAIR EAKELEY: Hopefully, Edna will be joining us
3 briefly, shortly.

4 MR. FORTUNO: So that you know, Elizabeth came back
5 and said there was no answer. But she left a message for her
6 on her answering machine.

7 M O T I O N

8 CHAIR EAKELEY: Okay. We have a four-item agenda.
9 The first -- five-item agenda. The first item of which is
10 approval of agenda. Is there a motion to approve?

11 MR. ERLNBORN: So moved.

12 MR. SMEGAL: Approved.

13 MS. WATLINGTON: Second.

14 CHAIR EAKELEY: You have to identify yourselves.

15 MR. SMEGAL: Smegal says so moved.

16 MS. WATLINGTON: Ernestine says second.

17 CHAIR EAKELEY: All those in favor?

18 (Chorus of ayes.)

19 CHAIR EAKELEY: Opposed?

20 (No response.)

21

1 CHAIR EAKELEY: The ayes have it. Second is to
2 consider an act on a proposed resolution recognizing and
3 thanking the law firm of Nelson, Mullins, Reilly, Scarborough
4 for their pro bono representation of LSC in the case of
5 Regional Management Corp. versus Legal Services Corporation.

6 M O T I O N

7 MR. ERLENBORN: John Erlenborn moves its adoption.

8 MS. ROGERS: Rogers seconds.

9 CHAIR EAKELEY: Any discussion?

10 (No response.)

11 CHAIR EAKELEY: All those in favor?

12 (Chorus of ayes.)

13 CHAIR EAKELEY: All those opposed?

14 (No response.)

15 CHAIR EAKELEY: Abstains?

16 (No response.)

17 CHAIR EAKELEY: The ayes have it.

18 MS. FAIRBANKS-WILLIAMS: Edna has joined.

19 CHAIR EAKELEY: Thank you, Edna. Welcome. We're
20 on agenda item number 3, which is consider and act on a
21 proposed resolution recognizing and thanking the law firm of

1 Porter, Wright, Morris, and Arthur for their pro bono
2 representation of LCS in the case of Ashtabula County Legal
3 Aid Corporation against Legal Services Corporation. Again,
4 you have --

5 MR. McCALPIN: Bet you know who gets to make this
6 motion.

7 M O T I O N

8 MS. ROGERS: Rogers. I move the resolution be
9 passed.

10 MR. McCALPIN: Thank you.

11 CHAIR EAKELEY: Is there a second?

12 MR. McCALPIN: Yes, I'll move.

13 CHAIR EAKELEY: Any discussion?

14 (No response.)

15 CHAIR EAKELEY: All those in favor?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: Opposed? Abstained?

18 (No response.)

19 CHAIR EAKELEY: The ayes have it. The resolution
20 passed. Fourth is consider and act on proposed extension of
21 John McKay's tenure as president of LSC to September 30,

1 2001. I had circulated to the board -- actually we had a
2 cover memo that went out on July 28 and -- I'm sorry, that
3 went out on July 21, not relating to the contract, but
4 providing background materials, and the contract got
5 circulated the next business day. And I apologize for the
6 confusion again. But there is a July 25th draft and what I
7 would propose doing is the following: there were a couple of
8 editorial changes that have been suggested that I would like
9 to just ask you to write into the draft contract and approve
10 before we get to the discussion point, just because I think
11 it would simplify the discussion and get this out of the way.

12 MR. SMEGAL: Doug, may I ask you, I have a cover
13 sheet that has a July 24 date on it and a July 24 transmittal
14 date that covers a July 25 draft. Is that the document you
15 are talking about?

16 CHAIR EAKELEY: We are talking about the July 25
17 draft.

18 MR. SMEGAL: But it's attached to a July 24 cover
19 sheet?

20 CHAIR EAKELEY: Correct.

21 MR. SMEGAL: Okay. All right.

1 CHAIR EAKELEY: Because it didn't get into the July
2 21 package.

3 MR. SMEGAL: Okay, but it has an inconsistent date
4 with the fax cover sheet, which is dated July 24.

5 MR. FORTUNO: The --

6 CHAIR EAKELEY: Yes, that's it.

7 MR. SMEGAL: Okay, that's fine. As long as I have
8 the right document.

9 CHAIR EAKELEY: The July 25 date was -- that has
10 nothing to do with the fax.

11 MR. SMEGAL: Okay.

12 CHAIR EAKELEY: My explanation of the explanation
13 of the changes in the memo and the contract from the
14 preceding contract are in the July 21 memo that went to the
15 board.

16 MR. SMEGAL: Got it.

17 CHAIR EAKELEY: And let me just suggest the
18 following changes to the July 25 draft and then open it up
19 for motion, second, and then discussion, assuming there's a
20 motion: paragraph 5, with a proposal to delete the last
21 phrase after "additional 30 days of paid leave to be used

1 before the end of the term of this contract." The reason
2 Bill McCalpin thought that or suggested that there not be a
3 requirement that John take that extra time during this
4 contract period unless he can, but that I think the way Bill
5 put it, he'd rather pay him to take it later.

6 MR. McCALPIN: What I said was that two months gone
7 out of the next 13 to 14 months seems like a long time, and
8 the way this says is "to be used before the end of the term,"
9 and that really mandates that he be gone. I said that I
10 would just as soon pay him for the time if he was there.

11 MR. SMEGAL: I'll second that if it's a motion by
12 Bill McCalpin.

13 CHAIR EAKELEY: Well, I'm just proposing -- what
14 I'm proposing to do is just take out that wording.

15 MR. McCALPIN: After "leave"?

16 CHAIR EAKELEY: Period, put a period after the word
17 "leave."

18 MR. McCALPIN: Right. Okay.

19 CHAIR EAKELEY: Then in 7, take out paragraph 9(D),
20 as in David. McCalpin is foxily laughing because what we had
21 provided or proposed was that paragraph 9(D) is not something

1 that we want to happen, but John would not have any moving
2 expenses --

3 MR. McCALPIN: Well, there would be some moving
4 expenses. I wondered what was the distance.

5 CHAIR EAKELEY: Paragraph 11, third line, where it
6 says, "Upon termination of this contract," it ought to read,
7 "upon termination of your employment pursuant to paragraph
8 9," just to make it consistent. And then in paragraph 13,
9 seventh line, see where the sentence ends, "LSC agrees to
10 employ you as a consultant for such further period of time"?

11 The suggestion is to add the following: "provided such
12 employment does not present any conflicts of interest and is
13 otherwise in accordance with applicable laws and
14 regulations." That is to say, if the employment as a
15 consultant -- to ward off the possibility that employment as
16 a consultant may constitute a conflict of interest if John,
17 for example, were to go to work for one of the programs or an
18 oversight committee of the Congress or something like that.

19 MR. ASKEW: Objection, your Honor.

20 CHAIR EAKELEY: Those are what I would consider to
21 be editorial refinements to the contract, and I would --

1 MS. FAIRBANKS-WILLIAMS: I have one.

2 CHAIR EAKELEY: Okay, Edna.

3 MR. SMEGAL: Doug, I wasn't quick enough to write
4 all that down, that last one was very long. Should I feel
5 obligated to write it on my copies?

6 CHAIR EAKELEY: No, I don't think -- if you want to
7 hear it again I can give it to you, but the concept is just
8 to say --

9 MS. FAIRBANKS-WILLIAMS: I just -- no conflict.

10 CHAIR EAKELEY: Right.

11 MS. FAIRBANKS-WILLIAMS: That was close enough.
12 Okay, number 17 is the last on this says, the last two lines,
13 "valid unless made in writing and signed by you and at a duly
14 authorized representative of the board." Now, I don't know
15 if you want a "duly authorized representative" to sign it or
16 if you want to put it in front of the board. That's kind of
17 confusing.

18 MR. SMEGAL: 16. 16.

19 MS. FAIRBANKS-WILLIAMS: Well, it says 17 on this,
20 on this one that I got on 21.

21 MR. SMEGAL: Don't look at that one.

1 CHAIR EAKELEY: Look at the one that is dated July
2 25. Edna, the reason we have done that, basically, the board
3 authorizes me to sign it on behalf of the board for John, and
4 that's the way we've done it before. And I think that would
5 work, but the purpose of this conference call is to become
6 duly authorized.

7 MR. McCALPIN: Do you want to --

8 MS. FAIRBANKS-WILLIAMS: Shouldn't it say "you and
9 a duly authorized representative" rather than "by you and at
10 a duly authorized representative"?

11 MR. McCALPIN: Yes, "at" doesn't belong in there.

12 CHAIR EAKELEY: Yes, thank you, eagle eye.

13 MS. FAIRBANKS-WILLIAMS: Yes, well, that's what I'm
14 saying.

15 CHAIR EAKELEY: You beat Bill McCalpin to the punch
16 there.

17 MR. McCALPIN: They both beat me --

18 MS. FAIRBANKS-WILLIAMS: In my thing here that I
19 got on the 21st -- I didn't get the one on the 25th.

20 CHAIR EAKELEY: You should have gotten something on
21 the 24th, Edna.

1 MS. FAIRBANKS-WILLIAMS: Well, as long as somebody
2 has signed it, then it is duly authorized, it doesn't make
3 much difference.

4 CHAIR EAKELEY: No. Okay.

5 MS. FAIRBANKS-WILLIAMS: Okay?

6 M O T I O N

7 CHAIR EAKELEY: Yes. Now what I would propose to
8 do is to entertain a motion to approve the contract as
9 modified, take a second, and then open it up to discussion.

10 MR. SMEGAL: I'll make that motion.

11 MS. WATLINGTON: I second.

12 CHAIR EAKELEY: Yes. So, Tom Smegal, motion?

13 MR. SMEGAL: Yes.

14 CHAIR EAKELEY: Second was?

15 MS. WATLINGTON: Ernestine.

16 CHAIR EAKELEY: Ernestine. Okay. Discussion?

17 MR. ERLNBORN: Okay. Doug, I have a couple
18 questions. Going back to paragraph 5.

19 CHAIR EAKELEY: Right.

20 MR. ERLNBORN: It provides for the additional 30
21 days of paid leave to be used before the end of this -- of

1 the term of this contract. The term of the contract does not
2 extend, I take it, into the consulting period.

3 CHAIR EAKELEY: We've actually deleted that last
4 phrase, John.

5 MR. ERLENBORN: Oh, you have?

6 CHAIR EAKELEY: Yes. Remember, that was our Bill
7 McCalpin question?

8 MR. ERLENBORN: Oh, I see. Okay.

9 CHAIR EAKELEY: That is no longer operative.

10 MR. ERLENBORN: Okay. Then on expenses, the same
11 question. "You would be entitled to reimbursement for all
12 reasonable, legitimate, and suitably documented," and so
13 forth, "incurred by you in the course of your employment as
14 president." Does that mean when he's not president, he
15 doesn't get those benefits?

16 CHAIR EAKELEY: Paragraph 13 talks about receiving
17 salaried benefits, but does not address expenses.

18 MR. ERLENBORN: Does not.

19 CHAIR EAKELEY: But fully, it should be.

20 MR. ERLENBORN: Yes. What if he were asked to come
21 from Seattle to Washington for a conference or someplace

1 else?

2 CHAIR EAKELEY: Yes.

3 MR. ERLENBORN: I just want it to be clarified.

4 CHAIR EAKELEY: Yes.

5 MR. BRODERICK: "Or during your period of
6 consultation." That would be one way to add it in 13.

7 MR. ERLENBORN: Well, 13 would have to specifically
8 address itself to expenses.

9 CHAIR EAKELEY: Yes, but it would go into the
10 phrase, "during his consultancy he will receive salaried
11 benefits and be entitled to reimbursement for all reasonable,
12 legitimate, and suitably documented business expenses." How
13 about putting it in there?

14 MR. SMEGAL: After "termination date, benefits at
15 your full rate of pay"? In other words, you can't stick it
16 in the middle of that.

17 CHAIR EAKELEY: No. Yes. Right. After, "as of
18 the termination date."

19 MR. SMEGAL: Comma, "and then there"?

20 CHAIR EAKELEY: Yes.

21 MR. SMEGAL: Okay.

1 CHAIR EAKELEY: In addition to -- same language,
2 "and will be entitled to reimbursement for all reasonable."

3 MS. BATTLE: Let me just -- I have a question,
4 Doug, about how this operates at the end of the contract as
5 of September 30, 2001, if there is no termination, if there
6 are consulting agreements at the tail end at all or not?

7 CHAIR EAKELEY: Yes. If the employment terminates
8 by virtue of expiration of the term, then what this
9 contemplates is that there will be a severance package, but
10 also contemplates that John will be and remain reasonably
11 available to the new board and the new management for a
12 period of one year.

13 MS. BATTLE: Okay.

14 MR. McCALPIN: Doug, I think they're so --

15 MS. BATTLE: There's a difference -- let me just
16 follow up if I can, Bill, before you get to it. I was
17 looking at the -- just as to whether this is consistent from
18 a time frame standpoint with the other contracts that we have
19 for the other officers and top management, and I believe that
20 their contracts run from January, I think, of 2002 date, upon
21 the expiration of that. I just think there might be a lag or

1 some difference in time in terms of how that will affect the
2 new board.

3 CHAIR EAKELEY: These were not -- I mean, there was
4 no effort made to dovetail everything on this.

5 MS. BATTLE: Okay.

6 CHAIR EAKELEY: This is the way this one -- the
7 timing negotiated out to have John remain through the
8 appropriations cycle.

9 MR. McCALPIN: Doug, I'd like to suggest as Victor
10 looks through this, if there may be some ambiguity or
11 confusion in the use of the word "term," whether it is the
12 term of the contract or the term as president, those are not
13 necessarily the same thing.

14 CHAIR EAKELEY: Right. Yes, I picked up that one
15 in paragraph 11 that you noted before, but this should be
16 harmonized. I agree with that. I think everyone would agree
17 with that.

18 Any other questions, comments, discussion? Hearing
19 none, are we prepared to proceed with the vote? All those in
20 favor of the contract as proposed and amended, say aye.

21 (Chorus of ayes.)

1 CHAIR EAKELEY: All those opposed?

2 (No response.)

3 CHAIR EAKELEY: All those abstaining?

4 (No response.)

5 CHAIR EAKELEY: The ayes have it. I thank you very
6 much. And, Victor, you and I will just work on doing that
7 term thing and we'll circulate this. We'll make these other
8 emendations, okay?

9 MR. FORTUNO: Yes.

10 CHAIR EAKELEY: Victor?

11 MR. FORTUNO: Yes.

12 CHAIR EAKELEY: Thank you. We're on item 5 now,
13 which is other business. Hearing no other business, may I
14 just suggest that you all have a wonderful month of August,
15 and I look forward to seeing you in September.

16 MR. SMEGAL: I have -- this is new business. I
17 have a memo here dated July 27 from Victor to all of us,
18 which does not require our attention at this point for
19 anything. Well, I guess it was your fifth item.

20 CHAIR EAKELEY: Well, actually, Tom, I sent a memo
21 -- you should have a memo from me also including --

1 enclosing a memo from the IG and disclosing that I had asked
2 the OIG liaison to look into the situation and report back to
3 the board.

4 MR. SMEGAL: Okay, I haven't seen that.

5 MS. FAIRBANKS-WILLIAMS: Oh, that report will come
6 in San Francisco?

7 CHAIR EAKELEY: I expect that we will take up this
8 matter or receive a report from John Erlenborn at the
9 September meeting.

10 (Discussion off the record.)

11 MR. MCKAY: Can I be on the record to just thank
12 the board for what I consider to be an honor, and very much
13 so? I was laboring the other night, having a copy of the
14 contract here, so I'd like to just review what Victor and
15 Doug come up with, but you can assume that I will sign it.
16 And I think it is a real privilege to be on board, also, with
17 the rest of our senior staff through the tenure of this
18 board, the longest-serving board. And I think that is very
19 significant that you set this up in a way that will, I think,
20 provide an orderly transition to the next board and keep a
21 lot of this board's policies moving forward.

1 Both -- the last thing if I could, Doug, I just
2 want to add on the last topic, Victor's memo to the board,
3 some of you -- I think all of you have. I spent -- I just
4 want to assure you that we had taken steps to make sure that
5 the work of the general counsel's office continues in an
6 orderly fashion. I think when you hear how all of this pans
7 out in September, you will not be alarmed. We have taken
8 steps to make sure that ethical and careful work is done as
9 Victor is making sure he does. He continues to have all of
10 my confidence and I think when you hear the details in a more
11 appropriate setting than this teleconference call, you will
12 be satisfied. And Doug and I are working on this and I know
13 several other board members, and it's going to work out just
14 fine. Very good. Okay.

15 CHAIR EAKELEY: Okay. Well, good balance of the
16 summer, everyone.

17 MR. BRODERICK: And you too, Doug.

18 CHAIR EAKELEY: And we'll look forward to rejoining
19 in September.

20 M O T I O N

21 MR. ERLNBORN: I move we adjourn.

1 CHAIR EAKELEY: Is there a second? That was Mr.

2 Erlenborn.

3 MS. WATLINGTON: And Ernestine second.

4 CHAIR EAKELEY: All those in favor?

5 (Chorus of ayes.)

6 CHAIR EAKELEY: Abstain, opposed?

7 (No response.)

8 CHAIR EAKELEY: The ayes have it. We stand

9 adjourned until September. Bye-bye.

10 (Whereupon, at 4:29 p.m., the meeting was

11 adjourned.)

12 * * * * *